Renewing Manitoba's Local Government Election Laws

A Discussion Document

TABLE OF CONTENTS

Ministers' Message

Introduction and Information on Making a Submission

PART 1: Pre-Election

1.1 Responsibility for Local Elections

1.2 Election Officers

A. Types of Election Officers
B. Appointment of Election Officers
C. Prohibiting Certain People From Being Election Officers

1.3 Voter Registration and Voters' Lists

A. Is a Voters' List Still Necessary or Useful
B. Is a Permanent Voter Registry a Reasonable Alternative
C. Who Should Make the Voters' List
D. New Rules for Making the Voters' List
E. Time Frames
F. Access to Voters' Lists

1.4 Nominations

A. Content of Nomination Papers
B. Signatures in Support
C. Filing Fees and Deposits
D. Nomination Period
E. Receipt and Acceptance/Rejection of Nomination Papers
F. Withdrawal by Candidate
G. Effect of the Death of Candidate, Prior to Election
H. Timing of the Public Disclosure of Candidates' Names

1.5 Campaign Finance and Expenses

A. No or Minimal Contributions or Expenses
B. Maximum Contributions and Expenses
C. Time Limits on Fundraising Activities
D. Records Respecting and Reimbursement of Municipal Campaign Finance
E. Consequences for Breaking the Campaign Finance Rules
F. Property Tax Credits for Campaign Contributions

1.6 Declaration of Candidates, Acclamations, and Calling Elections

A. Insufficient Candidates
B. Equal Number of Candidates and Seats
C. Contested Elections
D. Challenges to Candidates Eligibility

1.7 Preparing for the Vote

A. Ballots: Identifying Information
B. Order of Candidates on Ballots, and Combined Ballots

PART 2: The Election

2.1 Voting

A. Alternatives to Traditional Forms of Voting
B. Voting Day
C. Emergency Delay of Voting
D. Voting Hours
E. Advance Voting
F. Voting by Mail
G. Voting by Proxy
H. People Who Can Be Present at the Voting Place
I. The Poll Book
J. Time Off Work To Vote

2.2 Counting the Vote

A. Vote Counting Machines
B. Tie Votes
C. Recounts

2.3 By-elections

A. Calling a By-election

PART 3: Post-Election

3.1 Access to Election Records

3.2 Invalid Elections

A. Time to Make a Challenge
B. Corrupt Practices
C. Enforcement
D. Penalties for Corrupt Practices
E. Controverted Elections

PART 4: General Framework

A. Separate or Joint Municipal and School Division Elections
B. Is More Than One Act Necessary and/or Advisable
C. Regulations, By-laws and Discretionary Decisions
D. Unique Issues for Specific Local Governments
E. Local Questions

Conclusion

MINISTERS' MESSAGE

We are pleased to announce a comprehensive review of *The Local Authorities Election Act* which governs the administrative, procedural, and technical rules for municipal council and school board elections. The goal of the Review is for election processes to meet the needs of Manitobans and their local governments for the 2006 general local elections and into the future, by providing flexible and enabling legislation that permits the use of new and developing technologies, while still ensuring and protecting democratic values.

To provide Manitobans with an opportunity to participate in the Review, this Discussion Document, *"Renewing Manitoba's Local Government Election Laws"* has been prepared. This Document is intended to provide a reference point and a framework for Manitobans to comment on the many questions to be considered in developing new election processes. We extend an invitation to you to participate in the review by responding to the questions asked in the Discussion Document, and raising any other questions you may have about local government election processes.

We thank you for your interest in this very important project, and look forward to hearing from you.

Peter Bjornson
Minister
Education, Citizenship and Youth

Rosann Wowchuk
Minister
Intergovernmental Affairs and Trade

INTRODUCTION

Manitoba's local government election laws are vital to ensuring fair and democratic elections in its 199 municipalities and 38 school boards.

First written in the 1880s, the local government election laws have been revised numerous times to reflect Manitobans' changing views of democracy, but few changes have been made to the administrative, procedural, and technical rules that apply to achieve those democratic values. As a result, in the 21st century, Manitobans' democratic values are still governed by rules and procedures reflecting 19th century processes and technology, which make these laws difficult to understand and complicated to administer.

To develop new local election processes and procedures that are enabling and flexible, but respectful and reflective of democratic values, Manitobans' interests and views need to be identified and discussed. The purpose of this Discussion Document, *"Renewing Manitoba's Local Government Election Laws"*, is to provide a framework to elicit information and viewpoints and to prompt discussion about the administrative, procedural, and technical issues that should be considered in preparing new local government election laws.

This Discussion Document summarizes some of those issues, provides background information, identifies how other provinces have addressed the issues, and asks a number of questions. Issues are grouped under the broad headings of Pre-Election, Election, and Post-Election Issues, plus some general questions are asked about the framework for a new Act. An open invitation is extended to all Manitobans to respond to the questions asked in this Discussion Document. Not every question needs to be answered, nor is it necessary to limit answers to only those questions asked. If there are additional administrative or technical issues you think should be addressed as part of this review, but have not been raised in this Document, please feel free to also raise and address those issues.

To assist you, some principles to guide development of new election processes have been identified:

- **to ensure elections are run fairly and impartially;**
- **to make voting accessible;**
- **to be easy to read and understand;**
- **to not be too complicated to administer;**
- **to be flexible and able to adapt to future needs.**

As you read through this Discussion Document, you may want to refer to *The Local Authorities Election Act*, which can be accessed via the Internet at http://web2.gov.mb.ca/laws/statutes/ccsm/l180e.php.

A paper copy of the Act is also available at a cost through the Statutory Publication Office in Winnipeg at (204) 945-3101, or may be available at your local public library.

Information on Making a Submission:

Please provide us with your ideas for new election laws for Manitoba's local authorities. We invite you to comment on some or all of the matters outlined in this document, as well as any other issues that concern you and fall within the scope of local elections. Your comments and suggestions will help us ensure that Manitoba's local election laws continue to serve the interests of the public and meet their needs, today and in the future.

The questions posed in this document are set out on the Manitoba Government Web site. **You may submit your comments electronically by visiting that site at www.gov.mb.ca/laeareview .** Written submissions may also be forwarded to:

The Local Authorities Election Act Review
508 - 800 Portage Avenue
Winnipeg MB R3G 0N4

Your views will assist in preparing new legislation to address local election needs in the most appropriate and flexible way possible, while ensuring the integrity of democratic values.

To ensure that your views can be considered as part of the legislative review process, please submit your comments and suggestions by no later than September 15, 2004.

PART 1 – PRE-ELECTION

To ensure fair and democratic elections, much work has to be done in advance of election day. Fundamental decisions are required including overall responsibility for elections; what election officers are necessary and what their responsibilities should be; how voters are registered; and how candidates are nominated and how they finance their campaigns. This section will address those issues, and others.

1.1 Responsibility for Local Elections:

Currently, municipalities and school boards run their own elections. To some extent, this may give incumbent elected officials some (albeit minor) level of influence over the way the elections will be run, even though they may be running for re-election themselves.

At the provincial level, an independent agency (Elections Manitoba) runs the elections. Elections Manitoba reports directly to the Legislative Assembly as a whole.[1] A similar structure is in place for federal elections, where elections are run by Elections Canada.[2]

In almost every province, local government elections continue to be run locally. The main exception is in New Brunswick, where local government elections are run by a central agency, the Municipal Electoral Officer who runs all municipal and school board elections in the province. In practice, the responsibilities of the Municipal Electoral Officer have been imposed upon the same independent office that runs elections to New Brunswick's provincial Legislature.[3]

In Nova Scotia, local government elections are run by local governments, but its legislation provides for appointment of a Municipal Electoral Officer from within a department of the provincial government. The officer can issue instructions to the election officers running local elections, but does not have the direct responsibility of running those elections.[4]

In some other provinces, the legislation gives someone from the provincial government certain limited responsibilities in relation to local government elections. Those powers are usually very limited to dealing with very specific issues, rather than maintaining any general powers of supervision. For example, in British Columbia, the provincial government must approve of wards in municipalities.[5] In some provinces, a Minister has the power to appoint someone to a vacant seat.

---

1 *The Elections Act* (Manitoba) s. 5 to 10.2.

2 *Canada Elections Act*, s. 13 to 21.

3 *Municipal Elections Act* (New Brunswick) s. 2, 5(1).

4 *Municipal Elections Act* (Nova Scotia) s. 3, 4.

5 *Local Government Act* (British Columbia) s. 36.1(4)

There are obvious financial cost implications in establishing a central agency to run local government elections, but there may be advantages. It may add an element of independence to the process of running local elections. It may mean the election rules would be interpreted with greater impartiality and applied more consistently across the province. It may also mean the central agency could do some or all of the following:

- Inform the public about the election process, the right to vote, and the right to be a candidate.
- Conduct independent investigations and, where appropriate, initiate prosecutions of offences.
- Ensure the voting systems used by local bodies are reliable.
- Monitor campaign contributions and expenses, and conduct independent audits.

However, as noted, there are cost implications, and there might be other ways to have some of these functions handled in a way that does not require setting up an entire new office. Different bodies might get different responsibilities.

A disadvantage of creating a central agency might be a loss of local autonomy in running local elections.

> **Q. 1** ***Should a central independent agency be created to oversee and govern local elections? Should elections continue to be run locally? Why or why not?***
>
> **Q. 2** ***If a central independent agency were created, how might it be funded?***
>
> **Q. 3** ***Could some of the advantages of a central independent agency be gained, but with the elections still being run locally? How?***

1.2 Election Officers:

Whether an election is run by a central independent agency or by a local government, the officers who are responsible for running the election need to be identified and responsibilities assigned.

A. Types of Election Officers:

Manitoba's laws are very detailed in identifying a series of different election officers who must each perform specific designated duties.

Under current rules in Manitoba, a local government must appoint no less than three different election officers: an enumerator, a revising officer, and a returning officer.[6] A

[6] *The Local Authorities Election Act* (Manitoba) s. 10(1).

different person must be appointed to each office. A series of other election officers can also be appointed, each with specific tasks: deputy returning officers, assistant enumerators, assistant revising officers, and poll clerks.[7]

These election officers' responsibilities can be characterized into two different categories. The officer who generally has the overall responsibility of running the election is the returning officer, assisted by deputy returning officers and poll clerks. They do most things related to running the election: they receive nominations, they get the election materials ready, and they run the polls on voting day.[8] What they cannot do, however, is make the voters' list, which is the responsibility of the enumerator (and assistant enumerators) and the revising officer (and assistant revising officers).

In theory, anyone can be appointed to these offices, not just employees of the local governments, but if a municipality wants to appoint its Chief Administrative Officer ("CAO"), and if a school board wants to appoint its secretary-treasurer as an election officer, that person can only be appointed as returning officer. He or she is expressly prohibited from being the enumerator or revising officer.[9] In practice, CAOs are usually appointed returning officers in municipalities, and secretary-treasurers are appointed in school divisions. Often, the enumerator and revising officer are also local government employees.

Manitoba is the only province that expressly prohibits certain election officers from certain functions and responsibilities.[10] The legislation in other provinces is directed more to making sure certain things get done, and much less about who actually does those jobs.[11]

Ontario's legislation is the least concerned about dividing responsibilities. All of the responsibilities are given to one person: the municipal clerk, who is not even given a special title for election purposes. The clerk is permitted to appoint a deputy returning officer and "any other elections officials ... that the clerk considers are required".[12] In other words, in Ontario, the legislation identifies an election head and then leaves it up to that person to decide how the requirements in the legislation will be met.

In Alberta, the election head appoints the other election officers. If the election head somehow becomes unable to do the job, then the mayor or reeve simply appoints a replacement.[13]

---

7 *The Local Authorities Election Act* (Manitoba) s. 54(1), 11(2), 20(1) and 67(1).

8 See, for example, *The Local Authorities Election Act* (Manitoba) s. 44(1), 63(1) and 54(1).

9 *The Local Authorities Election Act* (Manitoba) s. 10(5), (6) and (7).

10 *The Local Authorities Election Act* (Manitoba) s. 10(5) and (6).

11 *The Local Authorities Election Act* (Manitoba) s. 11.

12 *Municipal Election Act* (Ontario) s. 11, 15.

13 *Local Authorities Election Act* (Alberta) s. 14(1), 17 and 18.

Q. 4 ***Are separate election officers still required? Or can one officer be made responsible for running all aspects of an election, and delegating as necessary?***

B. Appointment of Election Officers:

The main issue on this point is whether local governments should be permitted to appoint someone or if the legislation should identify that person.

Typically, local government employees are usually chosen to run the elections in Manitoba, but it is not a requirement that an election officer be an employee.

In Alberta, Saskatchewan, and Newfoundland and Labrador, the legislation provides that the municipal clerk is the election head if no one else is appointed, but the municipal council can in some cases appoint someone else to run the election instead.[14] In British Columbia and Prince Edward Island, like Manitoba, the municipal council must appoint someone.[15]

An advantage with the legislation identifying a position to assume the role of election head is it relieves a local government from being required to appoint someone. Another advantage is that employees are more likely to be familiar about local government practices, including the rules in *The Freedom of Information and Protection of Privacy Act* about protecting personal information which may be necessary to apply to some election information.

A disadvantage in relying only on municipal employees is that it could limit their ability to do their regular duties.

Q. 5 ***Should the CAO of a municipality and the Treasurer of a school board be the election head? Should the local governments be able to choose to appoint someone else instead?***

Q. 6 ***If flexibility is to be permitted in choosing an election head, should the choice be limited to employees of the local government?***

C. Prohibiting Certain People From Being Election Officers:

Currently, Manitoba's law prohibits four categories of persons from being appointed as an election officer:

- candidates in the election;
- campaign workers for a candidate in the election;

---

[14] *Local Authorities Election Act* (Alberta) s. 13. *Local Government Elections Act* (Saskatchewan) s. 28. *Municipal Elections Act* (Newfoundland and Labrador) s. 13.

[15] *Local Government Act* (British Columbia) s. 41. *Municipalities Act* (Prince Edward Island) s. 48(1)(b).

- an incumbent elected official; and
- anyone who has been found guilty of an election offence (election offenses are discussed in more detail under Part 3.2.B.).

Some provinces do not prohibit anyone from acting as an election officer.[16] In provinces where there is an express prohibition list, the prohibitions are similar but not necessarily the same as in Manitoba.[17]

> **Q. 7** ***Are the current categories of people prohibited from being election officers appropriate? If they should be changed, then how?***
>
> **Q. 8** ***For people found guilty of election offences, should the prohibition be for only a limited range of election offences? Should the prohibition expire after a certain time?***

1.3 Voter Registration and Voters' Lists:

When Manitoba's local government election laws were first written, the only people who could vote were men who owned property. Women could not vote, and neither could men who did not own property. Given the limited right to vote, it was important at that time to have rules and processes that both *permitted* eligible voters to vote and *prevented* ineligible people from voting. Both aspects were equally important, and voters' lists were absolutely critical in doing that. Detailed rules and procedures were made so that people who were not eligible could not vote.

This was accomplished by using "closed" voters' lists. Only those individuals who were registered in advance on the final voters' list could vote. Individuals who were not on the list could not vote. Considerable efforts were made before voting day to make the voters' list as accurate as possible. After a preliminary list of registered voters was prepared, it had to be made publicly available for everyone to see. Anyone who was eligible to vote could ask to be added, and anyone could challenge whether another person was legitimately on the list.

A key step was the "sitting of revisions" – a formal process held before voting day where anyone could challenge whether anyone else was truly eligible to vote. It was such an important part of the process that only judges could preside over these sittings, and would not be relieved from this duty until decades later.[18]

---

16 *Local Authorities Election Act* (Alberta) see s. 13 to 20. *Municipal Elections Act* (Ontario) see s. 15. *Municipalities Act* (Prince Edward Island) see s. 48.

17 *Local Government Act* (British Columbia) s. 41: no candidate or agent. *Municipal Elections Act* (Newfoundland & Labrador) s. 13(7): no sitting councillor, no candidate or worker, no person found guilty of an election offence. *Municipal Elections Act* (Nova Scotia) s. 8(1): no person found guilty of an election offence in last ten years. *Local Government Election Act* (Saskatchewan) s. 34: no candidate.

18 See also BOYER, J., Patrick: *Election Law in Canada* (1998: Butterworths), vol 1., p. 417.

On voting day, only those people on the list could vote. Nobody could be added to the list on voting day. It has been suggested that in many elections more time was spent arguing over the voters' list than over the election itself.[19]

While the rules about the right to vote have been modernized, the rules for making the voters' list have not. Even today, the old approach to holding formal sittings of revisions continues to be a part of every local government and provincial election in Manitoba. Aside from relieving judges from holding the sittings, everything else about this part of the process continues to follow 19th century rules.

Present-day democratic values have changed considerably since the local government election laws were first written. Today, generally anyone is entitled to vote in an election who meets the three basic conditions: Canadian citizenship, age of majority, and residency. Gender is irrelevant. Land ownership is no longer a requirement to being eligible to vote (but it sometimes enables a person to vote). As such it is now considered much more important to permit flexibility on voter registration and voters' lists are no longer "closed".

The "open" list process (meaning that any qualified voter can register to vote on voting day) is common to every level of election in Manitoba.[20] Open list processes are also used in local government elections in most other provinces.[21]

A. Is a Voters' List Still Necessary or Useful:

Currently, voters' lists must be prepared for all local government elections in Manitoba, without exception. The same is true in Prince Edward Island, and also in Newfoundland and Labrador.[22]

By contrast, local governments in British Columbia, Alberta, and Saskatchewan, can choose to either prepare a voters' list or have registration occur at the polls when voters attend to vote.[23]

In Ontario, a voters' list is mandatory in every local election. However, the voters' list is essential because it is also used as the principal record of voting.[24] In other provinces,

---

19 Ward, Norman: *The Canadian House of Commons: Representation* (Toronto: University of Toronto Press, 1950) at p. 204.

20 *The Local Authorities Election Act* (Manitoba), s. 84. *The Elections Act* (Manitoba), s. 85(2). *Canada Elections Act*, s. 161.

21 *Local Government Act* (British Columbia), s.53(1)(a). *Local Authorities Election Act* (Alberta), s. 53(1)(b). *Local Government Election Act* (Saskatchewan) s.75(b). *Municipal Elections Act* (Ontario) s. 24 and 52(2). *Municipal Elections Act (New Brunswick), s.36(3). Municipal Elections Act (Nova Scotia)*, s. 97(b) and 98. *Municipal Elections Act* (Newfoundland and Labrador), s. 31(6).

22 *Municipalities Act* (Prince Edward Island) s. 49(3)(c). *Municipal Elections Act* (Newfoundland and Labrador) s. 31(1).

23 *Local Government Act* (British Columbia), s. 54. *Local Authorities Election Act* (Alberta) s.50(1). *Local Government Election Act* (Saskatchewan), s. 36(1) & 74.

24 *Municipal Elections Act* (Ontario) s. 19 to 23, and see also s. 52(1).

entirely separate documents (called the *poll book* in Manitoba) serve as the record of voting, with the voters' list used solely for the purposes of voter registration.

In New Brunswick, voters' lists are also mandatory, but elections in that province are run by a centralized agency that also runs elections to the provincial legislature.[25]

Because most restrictions that once limited the right to vote have been eliminated, it might not be necessary to require that, in every election, a voters' list must be prepared in advance.

When voters' lists are prepared in advance, some voters might not realize they can still register to vote at the polls on voting day. However, when no voters' lists are prepared in advance, the additional administration at the polls on voting day might slow things down. The delay might cause some people to leave without voting.

While the importance of the voters' lists in elections has been reduced considerably, it might not be reasonable in some elections to have all eligible voters register on voting day. In some larger areas, it might be more efficient to have election officers working from voters' lists, to keep to a minimum the number of registrations being made on voting day.

A voters' list might still be the most effective way to deal with non-resident landowners. In addition, because no more than two co-owners from any one property can vote, it may be helpful to identify which two owners, before voting day.

The general trend seems to be to continue to permit voters' lists to be used, but to not require it -- unless there are compelling reasons for requiring a list to be prepared in every case. That way, each local government can decide for itself which approach best meets its local needs.

> **Q. 9** ***Should voters' lists be required in every local election? Or should voters' lists be optional? Should there be any criteria when a voters' list is required?***
>
> **Q. 10** ***Would it be advisable to abolish voters' lists altogether?***

B. Is A Permanent Voter Registry a Reasonable Alternative:

Making a new voters' list for each election is time consuming and costly. Recently, some jurisdictions have moved towards permanent voter registries. For federal elections, and some provincial elections, a permanent register of voters has been established.[26]

---

25 *Municipal Elections Act* (New Brunswick) s.11(1). *Elections Act* (New Brunswick) s. 20.1.

26 *Canada Elections Act*, s. 44. *Elections Act* (British Columbia) s. 53 to 61. *Elections Act* (New Brunswick) s. 20.1.

Voter registries are also used for local government purposes in Alberta, where municipalities are permitted but not required to maintain a permanent register of voters. In British Columbia, voter registries are generally required, although local governments can choose instead to have all voter registration take place on voting day.[27]

In some provinces voters' lists for local government elections can be prepared from information in other voter registries, such as the federal voter registry or a provincial voter registry.[28]

> **Q. 11** ***Should local authorities be permitted, or perhaps even required, to establish a permanent voters' registry?***

C. Who Should Make the Voters' List:

If some form of voters' list is maintained, changes should be considered to the current formal process of compelling enumerators to make preliminary lists, which are then scrutinized by independent revising officers. In almost all other provinces, the general supervisor of the election either *can* be made responsible for the preparation of the voters' list,[29] or *must* be responsible for it.[30]

> **Q. 12** ***Is there any reason why the election head (the "returning officer") should not be given the responsibility of preparing the voters' list?***
>
> **Q. 13** ***Is there any reason why the returning officer should be prevented from being involved in the preparation of the voters' list?***

D. New Rules for Making the Voters' List:

The current rules to make the voters' list are very specific and inflexible. Despite voters' lists being open (and registration to vote permitted on voting day), a "final" list must be completed at least 14 days prior to the start of the nomination period. A specific number of copies must be produced at different times, and they must be distributed in specific ways. The enumerator can add names to the list, but only the revising officer can delete a name. And there is still a need for formal sittings of revisions over a period of three successive days.[31]

---

27 *Local Authorities Election Act* (Alberta) s. 49(1). *Local Government Act* (British Columbia) s. 54.

28 *Local Government Act* (British Columbia) s. 59(3)(b). *Local Authorities Election Act* (Alberta) s. 49(2). *Municipal Elections Act* (Newfoundland and Labrador) s.31(2).

29 *Local Government Act* (British Columbia) s. 61 & 62. *Local Government Act* (Saskatchewan) s. 36(2). *Municipal Elections Act* (Nova Scotia) s. 21, 22(4). *Municipalities Act* (Prince Edward Island)s. 49(3)(c).

30 *Local Authorities Election Act* (Alberta) s. 50(1). *Municipal Elections Act* (New Brunswick) s. 11(1). *Municipal Elections Act* (Newfoundland and Labrador) s. 31(1).

31 *The Local Authorities Election Act (Manitoba)*, s. 31(3), s. 14 to 17, and s. 19 to 22.

Traditionally, door-to-door enumerating has been a vital step in preparing voters' lists in Manitoba. In fact, it continues to be expressly identified as one of the mechanisms for preparing lists in local elections[32] and in elections to the provincial Legislature although there is greater flexibility to use other sources in rural polling subdivisions.[33] It continues to be imposed as a required step for preparing lists in local elections in Nova Scotia.[34]

In other places, information can be sought through the mail, and also by publishing public notices.[35] In yet other places, the legislation is silent as to the specific steps to be taken in preparing the voters' list, leaving those decisions to be made locally,[36] or may say nothing more than the list is to be prepared using available sources of information.[37]

One unique aspect to Ontario's process is that the preliminary list of voters is prepared by the municipal property tax assessor from the tax rolls, and then sent to the election head (ie. the municipal clerk) who is responsible for finalizing it.[38]

To correct or revise the list, legislation in some provinces requires a formal process be followed, but in others a general power is given to the election officer to make corrections to the list as new information comes to light.

> **Q. 14** ***Is it necessary to continue describing specific steps for the preparation of the voters' list? Would it work as well to simply direct the election head to prepare a list and to correct it as new information comes to light?***

E. Time Frames:

Local governments currently have a choice: they can make a list annually, every election year, or every four years.[39]

The list has to be provided to the candidate after "nomination day".[40] The nomination period for municipal councils is set for the seven days before the first Wednesday in October.[41]

---

32 *The Local Authorities Election Act* (Manitoba) s. 11(11) and 11(13).

33 *The Elections Act* (Manitoba) s. 30.1(3) and 30.2(4).

34 *Municipal Elections Act* (Nova Scotia), s. 24.

35 *Municipal Elections Act* (New Brunswick), s. 11(3) and (4).

36 *Local Authorities Election Act* (Alberta) s. 50(1). *Local Government Election Act* (Saskatchewan) s. 36. *Municipal Elections Act* (Ontario) s. 22. *Municipal Elections Act* (New Brunswick) s. 11(1). *Municipal Elections Act* (Prince Edward Island) s. 49(3)(c). *Municipal Elections Act* (Newfoundland and Labrador) s. 31.

37 *Local Authorities Election Act* (Alberta) s. 49(3). *Municipal Elections Act* (New Brunswick) s. 11(1).

38 *Municipal Elections Act* (Ontario) s. 19 and s. 22 and 23. See also the *Assessment Act* (Ontario) s. 15.

39 *The Local Authorities Election Act* (Manitoba), s. 11(1).

40 *The Local Authorities Election Act* (Manitoba), s. 31(5).

In British Columbia, where voter registries are maintained, any eligible voter can generally register at any time of the year. However, during an election period, a voter can only register during the first eight days of the election period. After that, the only way to register is on voting day.

> **Q. 15** ***Are the current dates for the completion of the voters' list appropriate? Does this provide sufficient time for candidates to make use of the voters' list? Should the dates for certain steps be moved forward, or moved back? Why or why not? If so, what should the new time frames be?***

F. Access to Voters' Lists:

Two important interests are at stake regarding public access to voters' lists: upholding the integrity of the election process by better assuring that only qualified voters are registered to vote; and protecting personal privacy and security of individuals by not allowing the information to be circulated too liberally. Different provinces address these competing interests in different ways.

In Manitoba, the preliminary voters' list prepared for a local government election used to be publicly posted so anyone can look at the list. The purpose was to permit others to determine if people on the list were not qualified to vote and to have them removed. However, for personal privacy purposes a voter can now apply in writing to have his or her personal information obscured from the list before it is posted (although any use of information on the list for any purpose other than election and political purposes is illegal).[42] Currently, one of the permitted uses of voters' lists is to allow candidates to use them for campaign purposes.[43]

For provincial elections, the returning officer is to make the list reasonably available for public inspection at any reasonable time of any day, except a holiday, until polling day. Candidates are entitled to a copy of the list, as are political parties.[44]

In some provinces, few rules limit the posting of preliminary voters' lists.[45] In other provinces, voter information is available to the public ahead of time, but with an express restriction that the information can only be used for election purposes.[46] In yet others, a

---

41 *The Municipal Act*, sec. 98(1).

42 *The Local Authorities Election Act* (Manitoba), s. 19(3)(b), 36.1 and 36.2. See also *The Elections Act* (Manitoba) s. 51.1(1).

43 *The Local Authorities Election Act* (Manitoba) s. 31(4), 31(5) and 36.2.

44 *The Elections Act* (Manitoba) s. 37(1), (2) and (5).

45 *Municipal Elections Act* (Ontario) s. 25. *Municipal Elections Act* (Nova Scotia) s. 33 to 35. *Municipal Elections Act* (Prince Edward Island) s. 49(3)(c).

46 *Local Government Act* (British Columbia) s. 62(3) and (6).

person can apply to have their name obscured from the list before it is posted.[47] In some provinces, anyone can ask to find out if another person is on the list, and they can receive a confirmation, but no other information can be provided in response to the question.[48] In others, people can only find out about the information in a voter registry that relates to themselves,[49] and in yet others, there is no provision for an objection process nor any requirement for public accessibility of the voters' list.[50]

Federally, a process to challenge names on the voters' list is available, but public access to the list is not permitted.[51]

> **Q. 16** ***How can an appropriate balance be struck between the competing interests of integrity of the election and personal privacy?***
>
> **Q. 17** ***Should candidates have access to voters' lists?***

1.4 Nominations:

To be nominated as a candidate in a local election, a person must meet several conditions: filing nomination papers that set out certain information (eg. name and address), and making certain declarations (eg. that the candidate is eligible to be nominated and not disqualified. Other conditions are some minimum level of local support, shown by signatures of eligible voters, and meeting a deadline for filing the nomination papers.

However, after being elected, a candidate must continue to be eligible throughout the term,[52] and any candidate who subsequently loses his or her eligibility as a qualified voter also loses his or her elected position.

> **Q. 18** ***Is it appropriate that once elected, an elected officer who moves out of the municipality must give up their seat on council?***

A. Content of Nomination Papers:

47 *Local Government Act* (British Columbia) s. 62(3) and (6). *Local Government Election Act* (Saskatchewan) s. 39.

48 *Municipal Elections Act* (New Brunswick) s. 12.1(1) and (1.1).

49 *Local Authorities Election Act* (Alberta) s. 50(1) and 59(7).

50 *Municipal Elections Act* (Newfoundland and Labrador) s. 31

51 *Canada Elections Act*, ss. 93 to 109; see also *Privacy Act* (Canada)

52 *The City of Winnipeg Charter*, 23(2). *The Municipal Act* (Manitoba), s. 91

NOTE. This was the subject of a lawsuit. In *Stuartburn R.M. v. Kiansky*, [2001] 8 W.W.R. 145 (Man. Q.B.), an elected councilor had moved, and therefore lost his residency status. He nevertheless claimed to be entitled to continue to sit on council, because he held an interest in land. That interest was a "remainder" interest on land (in fee simple). His mother, who lived on the land, held a life interest. The court held that the "remainder" was sufficient to remain a qualified voter, and therefore sufficient to hold office.

Nomination papers need to be filed to show a person's willingness to be a candidate. The papers provide information necessary to the running of the election, and that information is used to ensure the candidate is in fact eligible to be nominated. In some places, the papers must include an express consent or acceptance of the nomination.[53] In Alberta, the papers even include an express declaration that the candidate will serve if elected.[54]

Q. 19 ***Is the current content of nomination papers adequate or necessary?***

B. Signatures in Support:

Nominations must be endorsed by a certain number of qualified voters. This is not an indication that these people will be voting for the candidate; it is simply a show of support in that person being a candidate. Every province has a requirement for signatures; where the rules differ is in the number of signatures required.

In Manitoba, a candidate for mayor of Winnipeg needs 250 signatures. All other candidates in local government elections need signatures of 1% of eligible voters, except the requirement will never be less than 2 (even if there are less than 200 qualified voters) and will never be more than 25 (even if there are more than 2500 qualified voters).[55] In elections to Manitoba's Legislative Assembly, and also in federal elections, the minimum number of signatures required is 100, but typically the number of persons represented is larger.[56]

One advantage to requiring a candidate to obtain a minimum number of signatures is that it requires the candidate to make a modest effort within the community before filing the nomination papers. Another advantage is it shows that there is a level interest from within the community in supporting the individual's candidacy.

A disadvantage is that if the requirement for signatures is too high, it might be a barrier preventing some candidates from running (even if they do not expect to win, some candidates may want to run to raise awareness on certain specific issues).

Q. 20 ***Should the requirement for signatures from qualified voters be maintained?***

Q. 21 ***Is the current formula for the number of required signatures appropriate? Should it be changed? To what?***

---

53 *Local Government Act* (British Columbia) s. 72(1). *Local Authorities Election Act (*Alberta) s. 27(1).

54 *Local Authorities Election Act (*Alberta) s. 27(1).

55 *The City of Winnipeg Charter*, s. 26(c).

56 *The Elections Act* (Manitoba) s. 53(1); *Canada Elections Act* s. 66(1)(e).

C. Filing Fees and Deposits:

Currently, no deposit or fee is required to be nominated as a candidate in an election to the Manitoba Legislature.[57] However, in federal elections, a $1,000 deposit is required, but entirely refunded to every candidate who submits financial disclosure reports and other documents in a timely manner.[58]

In local government elections in other provinces, the rules vary:

- In British Columbia, local governments determine whether a deposit will be required, and the amount. The maximum allowed is $100. The deposit is only refundable to a candidate who files a finance and expense statement.[59]

- In Alberta, local governments determine whether a deposit will be required, and the amount. In areas where the population is more than 100,000, the maximum allowed is $500. In other areas, the maximum allowed is $100. The winning candidate gets the entire deposit back, and so does every other candidate who received at least half as many votes as the winning candidate.[60]

- In Saskatchewan, every candidate in a local government jurisdiction with a population of 20,000 must make a $100 deposit. The winning candidate gets the deposit back, and so does every other candidate who received at least 10% of the votes cast.[61]

- In Ontario, every candidate must pay a filing fee in an amount set by Provincial Government regulation. Currently, the fee is $200 for a candidate for mayor or reeve of a municipality, and $100 for every other candidate. The winning candidate gets the entire amount back, and so does every other candidate who received a designated percentage of votes cast (also set by Provincial Government regulations). Currently, the percentage is 2%.[62]

- In New Brunswick, every candidate in a town or city must make a $50 deposit. Every candidate in a rural community must make a $25 deposit. The winning candidate gets the entire deposit back, and so does every other candidate who got at least half as many votes as the winning candidate.[63]

---

57 *The Elections Act* (Manitoba) s. 52 & 53.

58 *Canada Elections Act* s. 451 and 468.

59 *Local Government Act* (British Columbia) s. 72.1.

60 *Local Authorities Elections Act* (Alberta) s. 29.

61 *Local Government Elections Act* (Saskatchewan), s. 46.1.

62 *Municipal Elections Act* (Ontario), s. 33(2)(c), and 34; Municipal Elections General Regulation, Ont. Reg. 101/97, s. 1(1) & 2.

63 *Municipal Elections Act* (New Brunswick), s. 17(2) and 17(2.3).

- In Nova Scotia, a deposit of $200 is generally required of every candidate, but a local government can lower the amount or waive it altogether. The winning candidate gets the entire deposit back, and so does every other candidate who got at least half as many votes as the winning candidate. Every remaining candidate gets half the deposit back. However, the refund will only be paid to a candidate who declares that all advertising material has been removed.[64]

- In Newfoundland and Labrador, every candidate in a city must make a $50 deposit. Every candidate in a town or region must make a $10 deposit. The amount is not refundable.[65]

In the summer of 2003, the City of Winnipeg's Campaign Expenses and Contributions Officer issued a report on the Audited Financial Statements filed by candidates following the 2002 Elections. He wrote the following in relation to fees and deposits:

> *Serious consideration should be given to the requirement of a cash deposit or a fee upon registration by each candidate. There were a number of candidates who registered but did not file the required audited statement. Half of the Mayoralty registrants did not meet the legislative requirements of filing audited statements. Over 10 percent of the Councillor registrants did not meet the legislative requirements of filing audited statements. During the last three civic elections, the penalty of not being able to run in the next Civic Election did not ensure that registered persons adhered to the legislative provision of submitting the required audited statement.*
>
> *It is therefore my recommendation that a fee or deposit be imposed upon candidates in order to register as a candidate for the election. I would recommend that the fee or deposit for Mayoralty candidates be set at $1,000.00, and the amount for Councillor candidates be set at $500.00. These amounts would underscore the serious nature of the democratic process. If a deposit is used rather than a fee, this amount could be refunded, but only if the individual meets all of the legislative provisions, including the filing of the audited statement.*

One advantage of requiring a fee or deposit is it shows a genuine interest in being a candidate. It can also be used to create incentives in following up on matters after the election. For example, it can be an incentive to a candidate filing his or her financial reporting documents, and it can be an incentive to removing advertising materials from public places.

Clearly, there is no one way to deal with the issue of fees and deposits, and those fees and deposits can be used creatively to further legitimate goals. A competing concern is whether fees and deposits might be an undue burden on candidates.

Q. 22 *Should nomination deposits or filing fees be required for local government elections? Why or why not?*

---

64 *Municipal Elections Act* (Nova Scotia), s. 51.

65 *Municipal Elections Act* (Newfoundland and Labrador), s. 18.

Q. 23 ***Who should set the amounts, and how should they be set? Fixed amounts in the Act? Variable amounts in Provincial Government regulations? Should maximum amounts be set beyond which local government cannot go?***

Q. 24 ***What should the amounts be? Should there be different amounts for different offices, and/or for different local governments? How should those differences be determined? Why?***

Q. 25 ***Should local governments be able to waive any fee or deposit requirements?***

Q. 26 ***Should the amounts be refundable deposits or non-refundable fees?***

Q. 27 ***If deposits are refundable should terms be attached before a deposit is refunded? Which ones?***

D. Nomination Period:

Currently, the fixed period of time to file nomination papers in municipalities other than Winnipeg is a seven-day period that closes three weeks before voting day.[66] For the City of Winnipeg, the nomination period is of no fixed duration, but closes at 2:00 p.m. on the Wednesday four weeks before voting day.[67] The provincial nomination period runs from the date of the writ commencing the election, to one o'clock on a Tuesday set by the writ which is not more than 29 days or fewer than 18 days from the date of the writ.[68]

Nomination periods for local government elections are different in every province. In Alberta and Nova Scotia, nominations can only be filed on one particular day. Alberta even sets a very narrow time period on that day for receiving nominations (10 a.m. to 2 p.m.).[69] In British Columbia, Saskatchewan, Québec and Newfoundland and Labrador, the nomination period is anywhere from seven to ten days.[70] In Ontario, a person can file nomination papers on any regular working day of an election year (ie. starting January 1st) up until the closing date for nominations (which is 45 days before voting day). A similar open approach is also taken in Prince Edward Island.[71]

However, one thing is consistent throughout most of the provinces: the closing date for nominations is almost always set in the legislation, and only rarely is the closing date set by the local government. This may be intended to eliminate any temptations that

66 *The Municipal Act* (Manitoba) s. 98(1).

67 *The City of Winnipeg Charter* (Manitoba) s. 26.

68 *The Elections Act* (Manitoba) s. 25(1), 27(2).

69 *Local Authorities Election Act* (Alberta) s. 28. *Municipal Elections Act* (Nova Scotia), s. 44(2).

70 *Local Government Act* (British Columbia) s. 69. *Local Government Election Act* (Saskatchewan), s. 50(2)(b). *Municipal Elections and Referendums Act* (Québec) s. 153. *Municipal Elections Act* (Newfoundland and Labrador) s. 14.

71 *Municipal Elections Act* (Ontario) s. 31, and s. 33(4). *Municipalities Act* (Prince Edward Island), s. 49(3).

incumbent elected councils and boards might have to set nomination periods in a way that could be to their advantage.

Clearly, there has to be a fixed time when the nomination period closes, and it has to be far enough in advance to allow preparations to take place for the election, and also for effective campaigning. But it should not be so far in advance that it might result in fewer candidates. The main issues for new legislation on this point will be in setting the specific closing date, and in determining whether the nomination period should generally be open or made shorter or longer.

An advantage with a relatively short nomination period is that the election officer who receives nomination papers will only need to be familiar with the technical details of receiving papers for a short period of time. Otherwise, with an open-ended period, it could require that officer to learn and re-learn the details several times in a year.

On the other hand, an advantage with an open-ended nomination period is that it is much more flexible for candidates in filing their papers. Candidates do not have to organize their affairs around short specific times to file the papers.

Q. 28 ***Should the time for filing nomination papers be open-ended, shorter or longer? Why?***

Q. 29 ***What is the best date to set for the close of the nomination period? Will this allow sufficient time for preparing election day materials (voting papers) and for effective campaigning?***

Q. 30 ***Should consideration be given to permitting local governments to set their own nomination periods? If so, what kinds of safeguards would be required to ensure the nomination period cannot somehow become inaccessible to some candidates?***

E. Receipt and Acceptance/Rejection of Nomination Papers:

Currently, nomination papers for municipal council elections must be filed with the returning officer for the municipality.[72] For school board elections, nomination papers must be filed with the returning officer for the school division.[73] Typically the person with whom the nomination papers are filed has some discretion whether to accept or reject them, based on compliance with the rules for filing (eg. has the candidate completed all information, is the candidate qualified to run for the position?)

The papers are supposed to be rejected if the candidate files papers that are incomplete or fail to meet the requirements in the Act. Depending on how close to the deadline the papers are filed and how soon the decision can be made to reject the papers, it could have an impact on the person's ability to correct the problem and submit complete

72 *The Municipal Act* (Manitoba) s. 98. *The City of Winnipeg Charter* (Manitoba) s. 26.

73 *The Municipal Act* (Manitoba) s. 98(2).

papers on time. Making that decision may also be difficult without opportunity for further inquiry.

In most places, the returning officer's decision to accept or reject papers is final. However, in British Columbia, in some instances the matter must be referred to the Provincial Court for a decision (ie. where the candidate's name appears on the British Columbia register of persons disqualified from being candidates in elections).[74]

> **Q. 31** ***Should all decisions to reject nomination papers be made by the election head? Should some decisions be referred directly to an independent body such as a judge or the Municipal Board? If so, which ones?***
>
> **Q. 32** ***Should the election head be required to state the reason(s) for rejection? Should there be a right of appeal from the election head's decision to reject nomination papers? How could an appeal be structured to not cause problems for the other election preparations?***
>
> **Q. 33** ***Should a nominee whose papers are rejected be given a minimum period of time to correct any errors (eg. two days), even if the time to file is otherwise closed? Should only some deficiencies be correctable?***

F. Withdrawal by Candidate:

Currently, a candidate who has filed nomination papers has until 2:00 p.m. of the second day after the close of nominations to withdraw his or her candidacy. However, a withdrawal will only be accepted if there are sufficient candidates remaining to fill the available offices. This is similar to the rules in Alberta. In British Columbia, a candidate can withdraw as of right up to a certain date; after that, the Minister's approval has to be obtained, and the Minister can decide whether the election is postponed or proceeds.[75]

In Manitoba's provincial elections, a candidate can withdraw at any time prior to polling day.[76]

If the rules are set too strictly, the results can sometimes have costly consequences. For example, during the 2002 elections, three candidates were nominated for two seats in one ward of a school division and an election was called. After the time to withdraw passed, one candidate wanted her name removed from the ballot. However, the rules did not permit that, so the election was held with her name on the ballot and despite her efforts to make her changed intentions publicly known, she was elected. A by-election had to be called. In this scenario, had the candidate been permitted to withdraw, it

---

74 *Local Government Act* (British Columbia) s. 75(3.2).

75 *The Local Authorities Election Act* (Manitoba) s. 51. *The Local Authorities Election Act* (Alberta) s. 32. *Local Government Act* (British Columbia) s. 80.

76 *The Elections Act* (Manitoba) s. 56(1).

would have left only two candidates remaining, who could have been awarded the two seats, but the legislation did not permit this.

However, setting a firm timeline for withdrawals decreases the prospect of unwarranted pressure on any candidate to step aside during the election campaign.

> **Q. 34** ***Are the current deadline rules for withdrawing a candidacy appropriate? Should any changes be made? If so, what? What are the implications for the timing of the election and for printing the ballots?***

G. Effect of the Death of Candidate, Prior to Election:

Currently, if a candidate dies before the vote closes, the election head must set new dates for nominations and for voting. The election head does not have the flexibility to decide whether the election could still proceed (for example, if there are sufficient candidates for an election). The same rules apply in Manitoba's provincial elections. By contrast, in Alberta, a local government can make a by-law in advance to set the rules in the event a death occurs. In British Columbia, the Minister decides if the election is postponed or proceeds.

> **Q. 35** ***Are the rules regarding the death of a candidate appropriate? What should the rules be, and why?***

H. Timing of the Public Disclosure of Candidates' Names:

Manitoba's local government election legislation currently requires that once filed, nomination papers are public documents and available for public review.[77] The provincial election legislation requires that the returning officer shall announce the names as soon as possible after the close of nominations.[78]

In Alberta, public disclosure of all names only happens at the same time, after nominations are closed. In British Columbia, the names of candidates can be disclosed from the moment the nomination is received.[79]

> **Q. 36** ***What should the rules be regarding disclosing names of candidates? Should names of candidates be disclosed as nomination papers are filed, or should names only be disclosed after the nomination period closes? Why?***

---

77 *The Local Authorities Election Act* (Manitoba) s. 44(2)

78 *The Elections Act* (Manitoba) s. 55(2).

79 *The Local Authorities Election Act* (Alberta) s. 28(4) & (6). *Local Government Act* (British Columbia) s. 73(6).

1.5 Campaign Finance and Expenses:

Detailed rules for campaign finances for elections to the provincial Legislature are set out in *The Elections Finances Act.*[80] Campaign finance rules for City of Winnipeg elections are fairly well developed, and are supplemented by City of Winnipeg by-laws. No such rules apply in local elections outside Winnipeg.[81]

For provincial elections, the rules apply to candidates and political parties. Political parties must register under the Act, and appoint officials. Candidates must also register and appoint an official agent, who also has responsibilities and obligations under the Act. That legislation requires the candidates, political parties and their agents to keep separate accounts and records of all contributions (including "in kind" donations), and expenses.

Only individuals who ordinarily live in Manitoba can make contributions, and a maximum total contribution to all candidates and parties or combination of them is set at $3,000 in any calendar year. Contributions through intermediaries are prohibited, and anonymous contributions over $10 cannot be accepted and if unable to be returned, must be paid to the Minister of Finance. The political parties' and candidates' agents can issue tax receipts for financial contributions.

The Elections Finances Act also limits total election expenses by political parties and candidates, applying formulae based on the number of voters. Advertising expenses are also limited, and are included in the total. In a non-election year, a political party is limited to $50,000 (adjusted for inflation after 2001) in advertising expenses, which is in addition to the election period spending. Only an official agent, or a party's chief financial officer, or a person acting on their behalf and with their knowledge, may pay for an election expense.

In Winnipeg, the legislation requires:

- Contributions cannot be received and election expenses are prohibited until after a candidate is registered for campaign finance purposes. Nomination papers can be filed later.
- Registration can be made as early as May 1 of an election year for mayoral candidates, and June 30 for councillor candidates.
- Audited financial statements must be prepared and filed after the election campaign, which are disclosed to the public.
- Elected candidates who do not file the required audited financial statements lose their seats.

---

80 *The Elections Finances Act*, C.C.S.M., c. E32

81 *The City of Winnipeg Charter* (Manitoba) s. 31 to 45. *The Local Authorities Election Act* (Manitoba) s. 235 and 236.

- Any candidate, whether or not elected, who does not file the required audited financial statements is not eligible to be nominated as a candidate in the next general election.

Additional City rules are:

- A cap on the total contributions from any one source: mayoralty candidates can receive no more than $1500 from any one source, councillor candidates no more than $750.

- Names and addresses of all contributors who contribute $250 or more must be disclosed.

- Anonymous contributions are prohibited.

- Candidates are limited in their total expenses based on a formula. Candidates can spend up to a designated amount per voter.

Outside Winnipeg, there are no such rules, and some of the Winnipeg rules may not work well.

In some provinces, including British Columbia, Ontario, and Newfoundland and Labrador, some campaign finance and expense rules apply to local government elections.[82] In other provinces few rules appear to apply (ie. Alberta, Saskatchewan, Québec, New Brunswick, Nova Scotia and Prince Edward Island).

Reporting requirements that are too complicated could discourage many qualified people from agreeing to be nominated as candidates. Reporting requirements should strike a balance between the goal of having as many qualified candidates run as possible, and transparent financial accountability.

A. No or Minimal Contributions or Expenses:

Many candidates in local elections in Manitoba neither solicit nor receive contributions, and many have few or no expenses. Others pay all of their campaign expenses themselves. Where a candidate accepts campaign contributions, the electorate may have an interest in the source of those monies.

However, the total combined contributions might be so small as to not merit detailed reports. Perhaps detailed disclosure of contributions should only be imposed after reaching certain minimum amounts. Thus, if combined contributions remain below a certain amount, then the declaration would only need to be a simple statement that the total contributions received was below a certain amount. The same rules might also apply to expenses.

---

82 *Local Government Act* (British Columbia) s. 83 to 93. Municipal Elections Act *(Ontario) s. 66 to 82.1.*

The amounts to be chosen should reflect a true minimum amount. In smaller communities combined contributions of $100 or more and combined expenses of $200 or more might be appropriate. In larger communities, combined contributions of $300 or more, and combined expenses of $400 or more might be more appropriate.

Q. 37 ***Should detailed financial reporting be required only if certain minimum amounts are met? If so, what should those minimum amounts be?***

Q. 38 ***Should a candidate who receives no contributions, and who has no expenses or funds all his or her own campaign be required to publicly declare that?***

B. Maximum Contributions and Expenses:

In City of Winnipeg elections, the current maximum total contributions that any candidate can receive from any one source is $1,500 for mayoral candidates, and $750 for councillor candidates.

Some have suggested that because individuals and the corporations they control are treated as separate individuals, some people can donate as individuals and then cause every corporation they own and control to also donate. One option suggested is to ban corporate donations entirely. (Federally, the cap on donations from corporations is $1,000.) In addition, a ban on union or other organizations might be appropriate.

In the 1998 Winnipeg elections total maximum campaign expenses were set according to a formula based on the number of voters in the area. Mayoral candidates could spend, in total, an amount determined by multiplying the number of voters in the City by 30 cents. Councillor candidates could spend, in total, an amount determined by multiplying the number of voters in their ward by 75 cents. These maximums were set by City council itself. In practice, this capped mayoralty expenses to just over $147,000. For councillor elections, the cap differed in each ward, depending on the number of eligible voters (ranging from just over $19,000 to just under $30,000).

In the summer of 2003, the City of Winnipeg's Campaign Expenses and Contributions Officer issued his report on the Audited Financial Statements received following the 2002 election. He wrote as follows:

> *Upon review of the various expenses in relation to the funds raised, there seems to be quite a large variance, ranging from 0% to 58%. In addition, in the last election as well as this one, there were situations where the overall expenses exceeded the total limitation, due mainly to the exclusion of fund raising expenses. Exclusion of these fund raising expenses from the total limitation contravenes the spirit of the total campaign expenses limitation. In essence, there is no control over the amount of expenses for fund raising.*

> *The following items should therefore be removed from this exclusion: "Opening and Closing inventory" and "Expense in holding a Fund-Raising Function".*
>
> *I would therefore recommend that the Total Expenses Limitation for Mayor and Councillor include "Fund Raising Expenses".*

Maximum donation and maximum expense limits can be set any number of ways: by set dollar amounts, or by a formula, with different maximums set, depending on the population of the local government.

> **Q. 39** ***Should maximum contributions and expense limits be set? How?***
>
> **Q. 40** ***Should local governments be able to reduce the maximums lower than the provincial maximum?***
>
> **Q. 41** ***Should donations be restricted to individuals only, so that corporate and union donations are prohibited?***

C. Time Limits on Fundraising Activities:

In Winnipeg, fundraising activities can only take place during the campaign period. For the mayoral race, the period begins on May 1st of the election year, and ends on the following March 31st. For the councillor races, the period begins on June 30th and ends on the following March 31st. The campaign period extends beyond election day to allow candidates to raise funds to pay off any debts that they might not be otherwise able to pay in full on election day.

> **Q. 42** ***Should campaign fundraising activities in all local governments be limited to a designated period?***
>
> **Q. 43** ***Should a province-wide campaign period be designated, or should local governments given the ability to set shorter or longer campaign periods?***

D. Records Respecting and Reimbursement of Municipal Campaign Finance:

If candidates are going to be required to follow limits, then they must be required to submit financial reports. The provincial elections legislation has strict requirements on the type of information to be filed and timelines for filing. Both political parties and candidates must file audited statements of income and expenses for which the Minister of Finance pays, up to an amount set by the legislation.[83] Part of the report to be filed is the names of persons who made a contribution of $250 or more.

Where a successful candidate fails, after notice, to file the required statements or return, the Chief Electoral Officer must file a report before the Legislative Assembly and if the

[83] *The Elections Finances Act*, s. 10.6.

required statement or return is not then filed, the candidate cannot sit in the Assembly. Unsuccessful candidates cannot run again, unless they file the required information. Statements and returns are public information and can be inspected by anyone.

The Chief Electoral Officer can also conduct inspections and audits. Offences under the Act, including failure to file documents, accepting excess contributions, and spending over the limits, are punishable as summary conviction offences and subject to fines (maximum $5,000 for individual and $50,000 for a political party). Only the Chief Electoral Officer can prosecute these offences under the Act, and any prosecution must be started within one year of the knowledge of reasonable and probable grounds.

Political parties and candidates are each reimbursed by the Minister of Finance for 50% of total election expenses, provided all proper documentation has been filed and the candidate or party did not overspend according to the limits.

If a central independent agency is created to run all local government elections, all campaign finance documents could be submitted to that office. Those documents would then be publicly accessible through it.

If a central independent agency is not created, all campaign finance documents could be submitted to the election head. Those documents could then be made publicly accessible through the municipal office.

> ***Q. 44 To whom should candidates deliver campaign finance reports? Should those reports be made public? What should those reports contain? Should those reports be reviewed for compliance with the rules? What, if any, limits should be set for contributions and expenses? Should there be any reimbursement of expenses? If so, by whom?***

E. Consequences for Breaking the Campaign Finance Rules:

Assuming the campaign finance records are monitored for compliance, non-compliance should have consequences. Enforcing campaign finance rules can be done any number of ways, including any one or more of the following:

- For winning candidates, forfeiture of the seat.
- A prohibition from running again for a pre-determined period of time (eg. not until after the next one or two general elections).
- A financial penalty.

The penalties might be different, depending on the rule that is broken.

In 2003, the City of Winnipeg's Campaign Expenses and Contributions Officer, in his report on the Audited Financial Statements for the 2002 election suggested that a

deposit or fee be required when filing nomination papers which would be forfeited for campaign finance infraction. In addition, he recommended that an automatic fine of $250 be levied on individuals who fail to file the required audited statement.

> **Q. 45** ***What penalties should be imposed for failing to comply with the financial reporting requirements? Fines? Disqualification from being nominated?***
>
> **Q. 46** ***Should a winning candidate lose his or her seat for failing to file the required disclosure documents? If so, for how long after that should he or she be prohibited from running again?***
>
> **Q. 47** ***Should a winning candidate who knowingly spent too much or took contributions that exceeded the maximum lose his or her seat? If so, for how long after that should he or she be prohibited from running again?***
>
> **Q. 48** ***For unelected candidates, what should be the penalties for breaking those same rules?***

F. Property Tax Credits for Campaign Contributions:

The City of Winnipeg currently has the ability to permit campaign contributions to qualify as tax credits, payable towards City property taxes.[84] While the City has the ability to implement such a tax credit system, it has never exercised that power. Other local governments might also want to have a power to create similar tax credit systems, or there may be other alternatives.

> **Q. 49** ***Should municipalities outside Winnipeg also have the power to create tax credit systems for campaign finances? Why or why not?***
>
> **Q. 50** ***Should other alternatives be permitted to refund or credit political contributions? What alternatives? What limits might be necessary? Who should set the limits: the Province or the local government?***

1.6 Declaration of Candidates, Acclamations, and Calling Elections:

After the nominations close, the election head must compile the list of candidates, and identify which of the following applies:

- There are not enough candidates to fill the available offices [eg. 4 candidates nominated for 5 at-large offices].

[84] *The City of Winnipeg Charter* s.46.

- The number of candidates is the same as the number of available offices [eg. 5 candidates nominated for 5 at-large offices].

- There are more candidates than available offices [eg. 6 candidates for 5 at-large offices].

A. Insufficient Candidates:

At present the returning officer cannot extend the nomination period when there are insufficient candidates. All nominated candidates get acclaimed (ie. declared winners without an election), with the unfilled seats remaining vacant.

In municipalities other than Winnipeg, if a councillor position is not filled, then the council can appoint someone to the vacant seat.[85] If the mayor or reeve's seat is not filled, then the councillors can select a mayor or reeve from amongst themselves and a by-election to fill that councillor's seat must then be held.[86] In school board elections, if there are not enough elected members, then the elected members may appoint.

In Winnipeg, a by-election must be called to fill a vacant seat (whether it is due to an insufficient number of candidates running, or due to an elected member resigning).[87]

In British Columbia, if there is an insufficient number of candidates the nomination period is extended by three days. If there continues to be insufficient candidates the elected officers on the local government can appoint someone, failing which a Government Minister can appoint someone.[88]

In Alberta, nomination day keeps getting pushed back by a day, until there are enough candidates. If, after 6 days, there continues to be vacant seats, the Minister can take whatever action he or she feels appropriate in the circumstances.[89]

In Saskatchewan, the nomination period can be extended. If an office still remains vacant after that then a by-election to fill the vacancy must be called at the first meeting of council.[90]

An ability to extend the time might save the City of Winnipeg the expense of running a by-election. In other places, it could result in a seat being filled in a more democratic manner (rather than by appointment). However, it is possible that, by extending the time to file, it is only delaying the inevitable – it will not result in anyone else filing

---

85 *The Municipal Act* (Manitoba), s. 102(1).

86 *The Municipal Act* (Manitoba), s. 102(2).

87 *The City of Winnipeg Charter* s. 50(1).

88 Local Government Act (British Columbia) s. 74(2), 78(1).

89 *Local Authorities Election Act* (Alberta) s. 31(1), (4).

90 *Local Government Elections Act* (Saskatchewan), s. 54(1), (2).

nomination papers. Moreover, if the time to file nomination papers can be extended, some people might play tactical games in deciding when they should file their papers.

> **Q. 51** ***Should the nomination period be extended if there are insufficient candidates? For what period of time?***
>
> **Q. 52** ***If there continues to be a vacancy, how should it be filled? Should a by-election be required? Should it be filled by appointment? Who should make the appointment?***

B. Equal Number of Candidates and Seats:

Where the number of candidates is the same as the number of available offices, there is no need for an election. The election head declares the candidate(s) elected.[91]

> **Q. 53** ***Have any problems been experienced for declaring candidates elected by acclamation? If so, what were those problems, and how might they be solved?***

C. Contested Elections:

Where there are more candidates than available offices, the election head must declare that a contested election will be held. The returning officer has seven days after the close of nominations to announce the names of the candidates, and to also formally notify the public as to the dates and times when votes can be cast including advance voting opportunities.[92]

> **Q. 54** ***Have any problems been experienced for declaring an election will be held? If so, what were those problems, and how might they be solved?***

D. Challenges to Candidates' Eligibility:

Currently, Manitoba's legislation does not have a process that permits challenges to a candidate's eligibility. As described earlier, determining if a candidate meets the criteria is the responsibility of the returning officer. Just because the returning officer has accepted the nomination papers, does not mean the candidate is in fact eligible, as the returning officer may not have had accurate information available. If a formal process were designed for challenge after nominations are accepted, it could also prevent the need for a by-election if an ineligible candidate is elected; however, it could unnecessarily delay the election, a costly and inconvenient result. An expedited process would be required but may be difficult to achieve.

---

91 *The Local Authorities Election Act* (Manitoba) s. 47.

92 *The Local Authorities Election Act* (Manitoba), s. 48.

British Columbia allows the election head or any eligible voter to challenge a candidate's nomination in Provincial Court.[93]

> **Q. 55** ***Should a formal process be established, where a person's eligibility to be a candidate can be challenged? Who should make the final decision on eligibility?***

1.7 Preparing for the Vote:

Many things must happen before voting day. The public must be informed that an election will be held; places must be found to cast votes; ballots must prepared and printed; and ballot boxes and other election materials must be ordered. (Where alternative voting methods are used, arrangements must be made to ensure those methods will be properly controlled and fully reliable.)

A. Ballots: Identifying Information:

Manitoba's local government election legislation does not expressly permit a candidate to use a name other than his or her legal name on the ballot. However, nicknames and names in brackets are regularly allowed. The provincial election legislation expressly permits this.[94]

In Ontario, names other than legal names are permitted, so long as the election head agrees. In British Columbia a candidate can specify that a different name appear, but the election head can put a shorter name on the ballot if it is too long to be accommodated. In Québec, an alternative name is permitted but only if "it is the name he always uses in his political, professional or social life and that he is acting in good faith".[95]

In Ontario, references to a candidate's occupation, degree, title, honour or decoration are expressly forbidden on the ballot. In British Columbia, the ballot cannot indicate that a candidate is holding or has held an elected office, cannot indicate a candidate's occupation, and cannot indicate a candidate's title, honour, degree or decoration received or held. By contrast, a person's occupation must be included on the ballot in Saskatchewan.[96]

Manitoba does not address the situation where two local government candidates have the same name, but does make provision for that in provincial elections[97]. Neither do

---

93 *Local Government Act* (British Columbia), s. 75.

94 *The Elections Act* (Manitoba) s. 73(7).

95 *The Elections Act* (Manitoba) s. 73(7). *Municipal Elections Act* (Ontario) s. 41(2) Rule 3. *Local Government Act* (British Columbia) s. 105. *Elections and Referendums in Municipalities Act* (Québec) s. 155.

96 *Municipal Elections Act* (Ontario) s. 41(2) Rule 4. *Local Government Act* (British Columbia) s. 105(3). *Local Government Elections Act* (Saskatchewan) s. 60(1)(c).

97 *The Elections Act* (Manitoba) s. 73(7)(c).

Ontario or British Columbia. In Québec, problems with similar names are immediately resolved because every candidate's address must be included on the ballot. In Saskatchewan, if two candidates have the same names, they can each request to have their address added on the ballot.[98]

> **Q. 56** ***What information should be on the ballot?***
>
> **Q. 57** ***Should the election head make the final decision as to what will and will not be permitted on the ballot?***

B. Order of Candidates on Ballots, and Combined Ballots:

The usual rule is that names of candidates are arranged alphabetically on ballots, however, exceptions are often permitted.

Manitoba's legislation requires candidate names to be arranged alphabetically on the ballot. However, if three or more candidates are running in a local government election, then the local government can choose to have each candidate named first on an equal number of ballots.[99]

Saskatchewan and Alberta permit a similar alternative approach in rearranging names.[100]

In British Columbia, a local government can provide that instead of being listed alphabetically, names will instead be arranged randomly, on the basis of a predetermined random selection process. By contrast, no option is given for any alternative method in Ontario where names must be arranged alphabetically.[101]

Some people believe there is an advantage to being identified higher on the ballot. This could be true – especially if there is a long list of candidates. But names being rearranged on different ballots could make it difficult when counting the votes. This may cause inaccuracies in the final results.

Manitoba's legislation also prohibits the use of combined ballots. One set of ballots must be printed for electing the head of council, and a separate set of ballots must be printed for councilors. [102] In other provinces, for example in British Columbia, "composite" ballots are permitted.[103]

---

98 *Elections and Referendums in Municipalities Act* (Québec) s. 171(3). *Local Government Elections Act* (Saskatchewan) s. 60(1)(d)

99 *The Local Authorities Election Act* (Manitoba), s. 63(3), (4).

100 *Local Government Elections Act* (Saskatchewan) s. 60(2). *Local Authorities Election Act* (Alberta) s. 43(3)

101 *Local Government Act* (British Columbia) s. 107. *Municipal Elections Act* (Ontario) s. 41.

102 *The Local Authorities Election Act* (Manitoba), s. 63(6).

103 *Local Government Act* (British Columbia), s.104(2).

Q. 58 ***Should alphabetical listing continue to be the general rule? If not, how should the names be listed instead?***

Q. 59 ***Should combined ballots be permitted?***

PART 2 – THE ELECTION

2.1 Voting:

Historically, votes could only be cast on the specified voting day, during the specified voting hours, and at a specified voting place. Over time, making voting more accessible to more people has been given greater importance. Additional voting opportunities have been devised in order to give more voters a chance to vote. Manitoba's laws now provide for a series of alternative voting opportunities, including hospital polls, moving polls, advance polls, and voting by mail.[104] These and other issues are explored below.

Secret voting will remain a fundamental principle in new election legislation. While in earlier times elections were held in open forums and everyone knew how everyone else was voting, over time it became recognized that one of the key defining characteristics of a truly democratic election is that votes must be cast in secret. In fact, the right to vote in secret is considered to be so important that no person can be compelled to testify in court as to whether he or she voted, or how their vote was cast.[105] This important protection will be continued.

A. Alternatives to Traditional Forms of Voting:

Manitoba's legislation assumes that all ballots will be cast on paper, and that those ballots will generally all be cast at the same physical location.

Since the Act was written, many different kinds of alternative voting systems have developed. Many of these use advanced technology and do not require paper ballots or standard ballot boxes. Examples include touch-tone telephone voting, electronic voting (eg. on the Internet), and on-site voting using computer touch screens.

The Town of Gravenhurst, Ontario, (population 10,000) conducted its elections in 1997 entirely by telephone, which has been reported on positively. (About half of the eligible voters were non-resident landowners.[106])

In other cases, paper ballots are being used in new and innovative ways. Many places, including Manitoba, already permit voting by mail as an alternative. In 2001, St. John's, Newfoundland and Labrador – a city of about 100,000 people – held its entire general election by mail. In fact, this election proved to be more accessible – fully 60% of eligible ballots were cast – than the prior elections, with a more typical voter turnout of 50% to 53% of eligible votes cast.

---

104 *The Local Authorities Election Act* (Manitoba) s. 56.1 (hospital polls), s. 56.2 (moving polls), s. 587 (advance polls), s. 95(3) to (10) (vote by mail).

105 *The Local Authorities Election Act* (Manitoba) s. 78.

106 Municipal World magazine (April 1998, p. 19)

Clearly, any new legislation should allow flexible alternative forms of voting, but any new processes must assure that the election can be run fairly and impartially in a way that best enhances voting accessibility, and maintains the integrity of the democratic process.

All other provinces' legislation continues to provide for elections using paper ballots and ballot boxes as a first alternative. Even in Winnipeg, which can use vote counting machines, the election system continues to be based on paper ballots and ballot boxes.

> **Q. 60** ***Are there any reasons why the Act should necessarily require that all elections must continue to be run using paper ballots and ballot boxes?***
>
> **Q. 61** ***Should local governments decide for themselves which alternative forms of election will be used, or should the Provincial Government have a supervisory role to determine which alternative forms of election will be permitted? Why?***

B. Voting Day:

The next general voting day for most local elections is set for Wednesday, October 25, in 2006.[107]

One advantage to having one voting day for all local government elections throughout the province is it is clear and known, and limits any confusion over dates. However, there might be an advantage to having alternate voting days. For example, municipalities with different voting days could share the cost of election equipment.

An alternate voting day is set for three Manitoba communities -- Dunnottar, Victoria Beach, and Winnipeg Beach. In those communities, voting day for municipal councils is set for Friday, July 28, 2006.[108] The reason for alternate voting days in the these three communities is due to the high number of non-resident property owners ("cottagers") who are more likely to be present in the community during the Summer than in the Fall for campaigning and voting purposes.

In Ontario, no separate elections day is set for cottage communities but legislative changes in 1996 permitted some communities to experiment with alternative voting methods that did not require the voter to be present in the community on voting day. Some communities implemented vote-by-mail methods for the entire elections, while other communities used telephone voting methods. With both those methods, non-resident landowners were easily able to cast their votes despite distance issues.

---

107 *The City of Winnipeg Charter* (Manitoba) s.19. *The Municipal Act* (Manitoba) s.86(1). *The Public Schools Act* (Manitoba) s.25(2).

108 *The Municipal Act* (Manitoba) s.86(2)&(3).

Q. 62 ***Are there any compelling reasons to consider alternative voting days?***

Q. 63 ***Are summer elections in cottage communities still necessary?***

C. Emergency Delay of Voting:

In some jurisdictions, a power is given to someone – usually the head election officer -- to delay voting day in emergency situations. A power to delay a local government election does not exist in Manitoba, but it is possible in a provincial election.[109]

Delaying a voting day after it has already been set can be extremely disruptive to candidates and their election strategies. It can also reduce overall voter turnout. Any power to delay a voting day would almost certainly need to be limited to emergency situations. Depending on the method of election being used, what constitutes an emergency might change. For example, a serious storm could be an emergency for a traditional election using voting places, ballots and ballot boxes, but not for an election by phone, where an emergency situation might arise if telephone service is somehow disrupted.

Q. 64 ***Who should have the power to delay voting day in emergency situations? Should it be the election head, or the Provincial Government? On what conditions?***

D. Voting Hours:

Currently, polls for both provincial and local government elections open at 8:00 a.m., and close at 8:00 p.m. While this perhaps makes for a long day for election workers, it also makes voting more accessible.[110]

Q. 65 ***Is it necessary to require polls to be open for all those hours in every election? Are there any circumstances where a shorter voting period should be permitted? How might this affect the right to register to vote at the poll?***

E. Advance Voting:

One of the ways to make voting more accessible is to require local authorities to permit advance in-person voting, to allow people to vote when they would otherwise be unable to do so on voting day. Manitoba's provincial election legislation requires advance voting, but the local government election legislation does not; in-person advance voting is only permitted, but not required. Election heads decide whether they will permit advance voting, or they can be directed by the municipality to permit advance voting.

109 *The Elections Act* (Manitoba), s. 25(3).

110 *The Local Authorities Election Act* (Manitoba) s. 53(2). *The Elections Act* (Manitoba) s. 72.

Where advance voting is available, the general rule is it must be conducted for the three business days just before voting day, but a municipality can choose to have fewer advance voting days.[111]

One of the disadvantages to advance voting is that candidates might not have had an opportunity to deliver their complete campaign messages before some people have voted. For this reason, advance voting is currently only available to those voters who have reason to believe they will be unable to vote on voting day. These voters even have to make a declaration that they will likely be unable to vote on voting day. Similar limits on the right to vote in advance are imposed in British Columbia.[112]

In British Columbia, at least two advance voting opportunities must be given in every municipality, except communities of less than 5,000 people can choose to have only one advance voting day.[113]

By contrast, in Ontario, there are no restrictions on advance voting. Any person who can vote on voting day can choose, for his or her own reasons, to vote at an advance voting opportunity.[114]

While advance voting can have an impact on a candidate's ability to formulate an election campaign strategy, it has its administrative advantages – especially where expensive technology is being used for voting. One Ontario municipality used this flexibility to its advantage for one election, when it used computer touch-screen technology for voting. Because the technology is expensive, only a limited number of machines were available. In order to prevent long line-ups on voting day, the election officers arranged to have a series of different advance polls at different locations throughout the community, with the hope that as many people as possible would vote at the advance polls, and would not wait until voting day.

Q. 66 ***Should in-person advance voting continue to be optional? Should it be required to be permitted?***

Q. 67 ***Should there be a set minimum and/or maximum number of days for advance voting?***

Q. 68 ***Should advance voting continue to be available to only those people who will not be able to vote on voting day? Or should anyone be entitled to advance vote, regardless of their reason?***

Q. 69 ***What other rules should apply to advance voting?***

F. Voting by Mail:

111 *The Local Authorities Election Act* (Manitoba) s. 57.

112 *The Local Authorities Election Act* (Manitoba) s. 57. *Local Government Act* (British Columbia) s. 97.

113 *Local Government Act* (British Columbia) s. 97.

114 *Municipal Elections Act* (Ontario) s. 43.

Advance voting can also be done by mail in Manitoba's local government elections, but only in limited circumstances. In order to vote by mail, a voter must apply in writing to the election head at least 14 days in advance. A ballot is then mailed to the voter, who can then mark the ballot and return it by mail. Ballots received by mail by election day will be counted.[115]

Most other jurisdictions also provide for voting by mail.[116] In Newfoundland and Labrador, voting by mail has been taken one step further and a municipality can decide to run its entire election by mail. As noted above, St. John's has done just that.[117]

Q. 70 ***Is there any need to enhance the current rules for voting by mail? If so, how?***

Q. 71 ***Is there any reason why local governments in Manitoba should not be given the opportunity of running their entire elections by mail?***

Q. 72 ***Are there timing considerations that need to be reflected?***

G. Voting by Proxy:

Voting by proxy involves an eligible voter asking another eligible voter to vote on his or her behalf. The voter who asks the other voter to vote on his or her behalf must formally give away his or her right to vote.

Voting by proxy is permitted in Ontario, Nova Scotia, and Newfoundland and Labrador, but an eligible voter can only be a proxy for one other eligible voter. Ontario lifts the restriction in relation to immediate family members.[118]

Manitoba currently does not permit voting by proxy. Neither do British Columbia, Alberta, Saskatchewan, New Brunswick or Prince Edward Island.

A variation of the proxy vote is a "friend of elector", intended to assist people who would have physical difficulty filling out the ballot due to blindness or other physical limitations. In many ways, this flies in the face of voter secrecy – because it means someone else gets to see and know the vote. On the other hand, it allows people to vote who otherwise would not be physically able, extending accessibility. This is permitted in Manitoba's provincial elections.[119]

---

115 *The Local Authorities Election Act* (Manitoba) s. 95(3) to (10).

116 *Local Government Act* (British Columbia) s. 100.

117 *Municipal Elections Act* (Newfoundland and Labrador) s. 54.

118 *Municipal Elections Act* (Ontario) s. 44. *Municipal Elections Act* (Nova Scotia), s. 75 to 80. *Municipal Elections Act* (Newfoundland and Labrador) s. 27, s.44.

119 *The Elections Act* (Manitoba) s. 94.

Q. 73 ***Should provisions be put into place for "friend of the elector" to expand accessibility?***

Q. 74 ***What safeguards may be desirable to enable the ballot to be completed by a friend of the elector, to ensure the elector's voting intentions are accurately carried out?***

Q. 75 ***Is there any reason why voting by proxy should be introduced in Manitoba, especially if the option to vote by mail or other alternative method is broadened?***

H. People Who Can Be Present at the Voting Place:

When voting is conducted in the traditional way (ie. with polling places), only certain people are allowed to be present throughout the entire time of the voting process: the election officers, interpreters, and candidates and their official witnesses ("scrutineers").

Of course, voters are permitted to be present, but only for the purpose of voting. Otherwise, voters must vacate the premises.

Manitoba's rules on this are similar to the rules in other provinces. The only variable is the numbers of official witnesses a candidate is allowed to have in a voting place. Currently, Manitoba permits a candidate to appoint two official witnesses to every poll where voting takes place. In addition, a candidate can appoint one official witness at large who can attend all polls. The candidate and his or her official campaign agent can also attend every poll. [120]

In Ontario, for example, a candidate can appoint one official witness for every ballot box (regardless of how many voting places there might be). The rule is the same in British Columbia – except that a local government can decide to allow more than one official witness per ballot box.

The provinces also clearly differ on the right of a candidate to be in a voting place. Manitoba clearly allows a candidate to be in any voting place at any time. The candidate can even assume the function of scrutineer. Ontario also permits the candidate to be present. By contrast, in British Columbia a candidate is only permitted in a voting place to vote, and then must leave.

Q. 76 ***Should there be a rule setting the maximum number of official witnesses for a candidate? Why?***

Q. 77 ***Should candidates continue to be allowed to be in voting places as they please? Or should they only be allowed to be there to vote? Why?***

120 *The Local Authorities Election Act* (Manitoba) s. 82(1).

Because an eligible voter can register to vote on voting day, Manitoba's legislation was recently changed to make it clear that a person can only register to vote by establishing his or her identity (which can include being required to produce identification documents). However, where a person's name already appears on the voters' list, that person cannot be required to produce identification documents. That person can, however, be asked to make a declaration that he or she is eligible to vote. This is generally similar to what happens in other provinces, such as British Columbia, Saskatchewan and Ontario. [121]

Some people think a poll clerk and an official witness should be able to demand *anyone* who presents himself or herself to vote at a polling station to produce identification in order to limit possible voting irregularities. Other people think this could reduce voter accessibility.

> **Q. 78** ***What is the appropriate balance between ensuring voter accessibility and preventing irregularities? Is there any reason why the current rules about requirements to produce identification and make declarations should be changed?***

I. The Poll Book:

Two separate records are maintained at the polling places: the voters' list (discussed above) and the poll book.

The poll book is the record of voters who received ballots, or who were refused ballots and the reasons. It is also used to record objections by candidates' official witnesses to the eligibility of any voter to vote (but who was still given the right to vote because a declaration was made).

Some other provinces, such as Saskatchewan, also require separate "poll books". By comparison, no specialized poll book is required in Ontario – everything is recorded directly on the voters' list. In British Columbia, there is only a general requirement to maintain a record of the election proceedings, but without any directions how.[122]

> **Q. 79** ***Is there any reason why a separate "poll book" should continue to be required? Would it be sufficient to require that an appropriate record of voting proceedings be maintained, and let the election officers decide how best to meet that requirement?***

---

121 *The Local Authorities Election Act* (Manitoba) s. 84(1). *Local Government Act* (British Columbia), s. 116. *Local Government Elections Act* (Saskatchewan) s. 76(a). *Municipal Elections Act* (Ontario) s. 52(1).

122 *The Local Authorities Election Act* (Manitoba). *Local Government Act* (British Columbia). *Local Government Elections Act* (Saskatchewan). *Municipal Elections Act* (Ontario).

J. Time Off Work To Vote:

Manitoba's local election laws do not give employees the right to time off work to vote; the legislation for provincial elections gives every employee the right to three consecutive hours off work to vote[123], *likely because of the larger constituencies and* greater travel time required.

In Alberta and Ontario employees have the right to 3 consecutive hours off work to vote; in Québec and Newfoundland and Labrador, the right is to 4 consecutive hours.[124]

In British Columbia, Saskatchewan, New Brunswick, Nova Scotia, and Prince Edward Island, no provision is made for time off to vote in local elections.

> **Q. 80** ***In Manitoba do employees need time off from work to vote? If alternative methods of voting, like mail in ballots, are available, is the need for time off diminished?***

2.2 Counting the Vote:

The right to vote in secret means every vote has to be recorded and stored, to be counted later. Obtaining the results quickly and accurately are the challenges. When ballots are counted by hand, care must be taken to ensure all valid ballots are properly counted.

A. Approval of Vote Counting Machines:

Traditionally, vote counting has been done manually. However, vote counting machines have already been used in two general elections in the City of Winnipeg – in 1998 and in 2002.[125] Others are also interested in using machines to count votes,[126] and there should be little controversy in legislation that permits all municipalities to use machines of some kind, provided the method retains secrecy and ensures accuracy and efficiency.

> **Q. 81** ***Are there any limits on the types of vote counting machines that should be permitted? Should local governments be allowed to decide for themselves which alternative forms of election counting will be used, or should the Provincial Government have a***

123 *The Elections Act* (Manitoba) s. 89.

124 *Local Authorities Election Act* (Alberta) s. 58(1). *Municipal Elections Act* (Ontario) s. 50. *Elections and referendums in Municipalities Act* (Québec) s. 213. *Municipal Elections Act* (Newfoundland and Labrador) s. 34.

125 *The City of Winnipeg Charter* (Manitoba) s. 30.

126 As recently as November 5, 2003, the Manitoba Municipal Administrators' Association wrote to the Minister of Intergovernmental Affairs, asking that the ability to use voting machines be extended to municipalities outside Winnipeg.

supervisory role over which alternative forms of election counting will be permitted?

B. Tie Votes:

In Manitoba, tie votes are referred to a Queen's Bench judge for a recount and if the tie is confirmed, a new election is called. This can be time consuming and costly.

In other provinces a recount is the first step, because it can help determine whether there really is a tie.

In New Brunswick and in Ontario, the first step is to have the election head conduct a recount. If the result is still a tie, it then gets referred to a judge.[127] In British Columbia, Québec and Nova Scotia, a tie is referred to a provincial court judge for a recount. However, in British Columbia the election head can review the counts before referring the matter to the judge.[128]

Another option is to simply break the tie at random. In Alberta, and in Newfoundland and Labrador, a tie is broken by choosing a winner through a random draw. In Prince Edward Island, a tie is broken by coin toss.[129]

In Saskatchewan, if no winner can be declared because the top candidates have the same number of votes, neither of the candidates wins as a result of the election. The situation that had existed prior to the election is simply continued. Anyone can ask for a recount, which would be handled by a judge of any court.[130]

Q. 82 ***What process should be followed in dealing with a tie vote? Should the election head conduct a recount, or should the matter immediately be referred to an independent body for a recount?***

Q. 83 ***If a recount still shows a tie vote, how should the tie be resolved? By a new election or some other method? If there is to be a new election, should only the tied candidates be allowed to run or should anyone be eligible to run in the new election?***

C. Recounts:

Currently, for local government elections, recounts are only held if an application is made; there are no automatic recounts. In elections to the provincial Legislature, if a candidate won by 50 votes or less, a recount by a Queen's Bench judge is automatic.[131]

---

127 (New Brunswick) s. 41(3). (Ontario) s. 56.

128 (Nova Scotia) s. 130(1). (Québec) s. (British Columbia) s. 136(2).

129 (Newfoundland & Labrador) s. 60. (Alberta) s. 99. (Prince Edward Island) s. 48(7).

130 (Saskatchewan) s. 124, 126.

131 *The Elections Act* (Manitoba), s. 128(1).

Traditionally, in Manitoba judges conduct all recounts, whether the recount is a general recount of all ballots cast, or a recount with a limited scope. The advantage of having a judge conduct a recount is that judges are considered to have the highest level of independence. In several other jurisdictions, recounts are also conducted by judges.[132]

However, recounts must be done quickly. They take a lot of time, and they must be squeezed into court schedules that are already burdened. As such, some jurisdictions are moving towards other steps before matters get referred to judges.

In Ontario, before any recount gets to a judge, a recount must first be made by the election head. It is only after the election head has conducted and confirmed a recount that the matter proceeds to a judge. The same is true in Newfoundland, where recounts are first conducted by the returning officer – although a judge can be asked to deal directly with a recount before waiting for the returning officer to recount. Alberta also permits an initial recount by the returning officer before the matter gets to a judge, but a person can also choose to go directly to a judge. [133]

In British Columbia, the Chief Election Officer has a very wide discretion in dealing with results reported to him or her. For any reason, he or she can review any of the counts that have taken place.

> **Q. 84** ***Should recounts continue to be by judges, or could they be more effectively conducted by some other independent person? Should judicial review always to be available as a final option?***

2.3 By-elections:

By-elections may be required when a seat on a local government becomes vacant during the set term of office. However, in some limited cases, a by-election is not required; for example, if the next general election is 12 months or less away.

For the most part, the rules that apply to general elections are also the rules that apply to by-elections, to the extent the rules can be adapted. However, some issues are not easily adapted, and they require their own set of special rules.

A. Calling a By-election:

The current rules for calling by-elections are different for each: Winnipeg, all other municipalities, and school boards.

In Winnipeg, a by-election must be called within six weeks of the vacancy. However, if the vacancy occurs within the last 12 months of the term of office, then council can

---

132 (Saskatchewan) s. 126. (Québec) s. 263. (Prince Edward Island) s. 49(7). (Nova Scotia) s. 130, 131. New Brunswick s. 42(1). (British Columbia) s. 138.

133 (Ontario) s. 56, 57, 58. (Newfoundland and Labrador) s. 62. (Alberta) s. 98(1) and 103(1).

decide that no by-election will be held to fill a councillor's seat. If the mayor's office becomes vacant within the last 12 months, a by-election is not permitted. The Deputy Mayor performs the functions of the mayor.[134]

In municipalities outside Winnipeg, vacancies are not required to be filled within 6 months of the next general election, or 12 months of that date if the remaining number of councillors still comprise a majority.[135]

For school boards, if the vacancy occurs in the year the term of office expires, the board can resolve not to fill it.[136]

Q. 85 ***What should the rules for calling a by-election be?***

Q. 86 ***Should the rules for whether a by-election must be called be the same for all local governments?***

Q. 87 ***Should there be some flexibility?***

134 *The City of Winnipeg Charter* (Manitoba) s. 50, 51.

135 *The Municipal Act* (Manitoba) s. 105

136 *The Public Schools Act* (Manitoba) s.26

PART 3 – POST ELECTION

After voting is over, the votes have been counted, and the winning candidates have been declared elected, some issues still need to be addressed. The issues deal principally with record-keeping and election irregularities.

3. 1 Access to Election Records:

In Manitoba election materials must be kept for one year after the election.

In Alberta, ballots are kept until the time to challenge the election results has expired (ie. six weeks). Election registers must be kept until after the terms of office have expired.[137]

Other than requiring the poll book and other documents to be available the day after the election, the legislation is silent as to whether the information could be disclosed thereafter. Recently the Manitoba court, in the context of a judicial recount, held that in light of the legislative silence the documents could be examined after the first day after the election.[138]

> **Q. 88** ***How long after the election should sealed ballot papers be kept?***
>
> **Q. 89** ***How long after the election should the poll book be kept?***
>
> **Q. 90** ***Should voters' lists ever be made publicly accessible for research purposes? If so, how long after the election should they be made available for that?***

In Manitoba, as in Alberta and British Columbia, all nomination papers must be kept until after the term of office has expired. In Alberta and British Columbia, only voters (and not just anyone) can ask to see those records during the term of office.[139] This would seem to imply some consequences for successful candidates, if there were inaccuracies in these initial documents.

> **Q. 91** ***How long after the election should nomination papers be kept and available to the public?***
>
> **Q. 92** ***How long after the election should candidates be required to keep their financial records? Does the time limit change if those documents are publicly filed?***

---

137 (Alberta) s. 100.

138 On February 29, 1999, Glowacki J. of the Queen's Bench delivered reasons for decision in: *Browton* v. *Hart-Kangas*; *McCarron* v. *Winnipeg (Returning Officer and City Clerk)*; and *Hart-Kangas* v. *Winnipeg (Returning Officer and City Clerk)*.

139 (British Columbia) s. 73(8). (Alberta) s. 28(5), 34(3).

Q. 93 *How long after the election should candidates' financial records be publicly available?*

3.2 Invalid Elections:

Challenges to the validity of elections are often about more than recounting votes.

At present, if the election rules are not followed, a court can declare the election to be invalid and a candidate, declared elected, could lose their seat. The current legislation refers to this as a "controverted" election.

Challenges can be based on errors or irregularities in the voting process if those errors materially affected the result of the election, and on corrupt election practices such as bribery and fraud.

A. Time to Make a Challenge:

A democracy cannot run effectively if the validity of the election remains uncertain for too long. The time to file an application in court to make a challenge must therefore be relatively short. However, the time must not be so short that it realistically prevents legitimate challenges from being filed. For example, if the reasons to support a challenge can only be known after certain information is available, the time to file the challenge should not expire before that.

Currently, the time frame for filing challenges to local elections based on election offences is 6 months; other bases are limited to 21 days after the election.[140]

In federal elections and in elections to the provincial Legislature, a challenge can generally be filed within 30 days after the formal publication of the election results. In certain specific cases, such as bribery or fraud, there can be more time to file. [141]

In British Columbia, Québec, and Newfoundland and Labrador, the general time to file a challenge to local government elections is similar to the time in federal and provincial elections (ie. 30 days from formal publication of election results). In Alberta, the time is six weeks from election day. In Saskatchewan, the time is four weeks and Ontario allows 90 days. New Brunswick gives a very short time frame: 10 days from voting day. Nova Scotia uses the same time frame as Manitoba (21 days from voting day), but permits that time to be extended.[142]

Q. 94 *How much time should be given to challenge the validity of an election?*

140 *The Local Authorities Election Act* (Manitoba) s. 155(2).

141 *The Controverted Elections Act* (Manitoba) s. 15.

142 (British Columbia) s. 143(3). (Alberta) s. 124. *Controverted Municipal Elections Act* (Saskatchewan) s. 15. *Municipal Elections Act* (Ontario) s. 83(2). *Municipal Elections Act* (New Brunswick) s. 53(2). *Municipal Elections Act* (Nova Scotia) s. 158(5) and (6). *Municipal Elections Act* (Newfoundland and Labrador) s. 72.

Q. 95 ***Should a judge or some other official have the power to extend the time to file, in exceptional circumstances? What circumstances?***

B. Corrupt Practices:

Critical to fair and democratic elections is fair and appropriate conduct by election officers, candidates, their supporters, and others during the election campaign and on election day.

In most provinces, including Manitoba, fair conduct and behaviour during and at elections is principally achieved by a setting out a detailed list of prohibited actions that will be treated as offences. The list is lengthy, complex, sometimes unclear, and occasionally, in today's context, perhaps humorous (For example, it is not an election offence for a candidate to spend $2 at a tea or reception, but anything more than that is an offence.)

Some of the prohibitions are specifically directed to election officers and how they run the election, others apply specifically to candidates and their supporters, and yet still others to all persons, and may also apply to corporations.

Most of the prohibited conduct requires an intent to interfere with the election and the election results, and some conduct requires a finding of fraud.

The consequences vary, depending on the activity, its impacts and who the guilty party is: an election officer, a candidate, a supporter or a third party. Consequences include fines and possible imprisonment and, in the most serious cases, imprisonment must be imposed. Generally, election officers are held to the highest standard – and the most severe consequences because they are entrusted with the public's confidence to run fair elections. Consequences for a candidate include losing his or her seat, and a prohibition on running in the next election.

The general categories of election offences in the current legislation are:

- Tampering with election materials: before, during or after the elections.
- Undue influence at elections, including bribery, and donations and contributions by a candidate for improper purposes.
- Voting without the right to vote, or more than once.

Manitoba, like other provinces, also prohibits certain election day advertising and other activities.

The challenge for new legislation is to try to make sure election officers, candidates, their supporters and electors know what is, and what is not, acceptable conduct.

Q. 96 ***Is a general prohibition against unfair and "bad" conduct enough? Is more specific detail needed, so people know what they can and cannot do? What kinds of behaviour are not acceptable?***

Should the person's intent be a consideration? What are appropriate consequences for unfair and improper election conduct?

C. Enforcement:

Election offences are prosecuted through the courts, because the courts bring the highest level of independence to this very critical determination, and because of the possible serious consequences. However, the courts are expensive and can sometimes take a significant amount of time.

Q. 97 ***Are there alternatives to or within the court system that would be less costly and more timely, but also ensure a high level of independence?***

D. Penalties for Corrupt Practices:

The consequences for prohibited behaviour include fines (from $25 up to $2,000), possible imprisonment up to 2 years, removal of an elected candidate from office (and possibly being disqualified for a period of time), and possible prohibition on being involved in future elections. Consequences are similar in other provinces.

Some offences are obviously more serious than others and should have more significant consequences. One way to approach the issue is to have a range of consequences from which judges may determine what is the most appropriate in the circumstances.

Q. 98 ***What is the appropriate penalty for election offences? Is a range of penalties a good idea? Who should set the penalty or range of penalties? Should judges have discretion as to the penalty?***

E. Controverted Elections:

In addition to challenging the election of a person for election offences, a court petition can also be filed, claiming a candidate was not qualified at the time of the election. The petition must be filed within 21 days after the election, and can be filed by either another candidate or at least four persons who were entitled to vote at the election.

Q. 99 ***What should the new rules for controverted elections be?***

PART 4 - GENERAL FRAMEWORK

A. Separate or Joint Municipal and School Division Elections:

Municipal council elections and school board elections take place on the same day in Manitoba.[143] This permits municipalities and school boards to run their elections jointly, which many of them do. However, joint elections are not required, and some municipalities and school boards continue to run their own separate elections.

Other provinces' rules regarding joint elections vary.

- In Newfoundland and Labrador, there is no requirement for joint elections. Municipalities run their own elections, and school boards run their own elections.[144]

- In Alberta, joint elections are permitted but not required. Where agreements are reached for joint elections, municipalities and school boards can structure the arrangement however they see fit.[145]

- In British Columbia, joint elections are only required where the territory of a school division is entirely within the territory of a municipality. In those cases, the municipality must run certain aspects of the school board election. Otherwise, joint elections are permitted but not required. However, a school board can ask the Minister of Education to order a municipality to run its school board election.[146]

- In Saskatchewan, joint elections are permitted. There are two different approaches, depending on the way the municipal and school division territories overlap. Where a school division is substantially within a municipality, the municipality essentially runs both elections. In all other cases, the school division must first set the polling areas, after which the municipality runs both elections.[147]

- In Ontario, all school board elections are run by municipalities. Only one municipality is responsible for running any specific school board election, and it is determined according to which municipality has the highest population in that school division.[148]

---

143 *The City of Winnipeg Charter* (Manitoba) s. 19. *The Municipal Act* (Manitoba) s. 86(1). *The Public Schools Act* (Manitoba) s. 25(2).

144 *Municipal Elections Act* (Newfoundland & Labrador) s.13(1). *Schools Act, 1997* (Newfoundland & Labrador) s. 53.

145 *Local Authorities Election Act* (Alberta) s. 2 & 3.

146 *School Act* (British Columbia) s. 37. S. 40(1) deals with cost-sharing issues, while s. 40(6) to (9) deal with irregularities caused by differences in municipal and school division boundaries.

147 *Local Government Election Act* (Saskatchewan) s. 17 & 18.

148 Elections to and Representation on District School Boards Regulation (Ontario) s. 11.

- In Nova Scotia, the situation is similar to Ontario, except that the municipalities must decide amongst themselves which of them will handle the school board election. If they cannot agree, then the provincial government will designate one of them.[149]

There is more than one way to set the rules for joint elections, and each approach has its own advantages and disadvantages.

Joint elections means two sets of elections can be run more efficiently and at reduced overall cost. One administrator runs and coordinates both elections. However, one local government takes on more responsibilities (usually a municipality), while the other local government (usually the school board) loses direct control over its election processes.

An advantage of requiring joint elections, rather than just permitting them, is eliminating any obstacles that might currently prevent municipalities and school boards from reaching agreements to run joint elections and may also enhance voter accessibility. A disadvantage, however, is that it might limit some of the flexibility that municipalities and school boards currently have when structuring their arrangements.

Q. 100 ***Should municipalities and school boards be required to run joint elections? Should joint elections continue to be permitted but not required? Would voter accessibility be enhanced by joint elections?***

Q. 101 ***If joint elections are required, should all aspects be run jointly? Should only some aspects be required to be run jointly? Who should be required to do what?***

B. Is More Than One Act Necessary and/or Advisable:

Currently, one Act applies to all local elections in Manitoba: *The Local Authorities Election Act*. Additional rules in other related Acts apply to elections.

- To Winnipeg's City council: *The City of Winnipeg Charter*.
- To all other municipal councils: *The Municipal Act*.
- To school boards and school districts: *The Public Schools Act*.

In some cases, all three Acts say the same thing in the same way. For example, they all set the same date for the next general election. They also all say that judges and members of the Legislature and Parliament are disqualified from being elected.

In other cases, only one of the Acts will address certain important issues. For instance, detailed rules about campaign finance and expenses are set only for elections in

[149] *Municipal Elections Act* (Nova Scotia) s.5.

Winnipeg. As well, the use of computerized voters' lists, and the ability to use electronic machines or devices to count ballots, is expressly permitted for Winnipeg elections only.

Perhaps most confusing is the complex web of cross-references between the various Acts which make it difficult for anyone to read and understand the legislation.

> **Q. 102** ***Is consolidation of all the local elections provisions into one Act a good idea? Is there any reason to continue to have separate Acts?***

C. Regulations, By-laws and Discretionary Decisions:

Currently, the various Acts that apply to local elections contain a considerable amount of procedural detail within them. Very little is contained in government regulations or in local by-laws. It may be unnecessary for this level of detail to be set directly in the Act. Once an Act has become law, it can be difficult to fix minor details. The result is that, instead of evolving over time on the basis of experience, the process stays rooted in old rules that are not necessarily relevant to modern day realities. However, many of the rules for running an election are so important and fundamental they must still be set in legislation.

Some new rules could be set by the Government in regulations which would allow for easier changes but still require a level of provincial "oversight". Others could be set by local authorities in by-laws, and the returning officer could be given the ability to make decisions on some matters to be more efficient and effective.

> **Q. 103** ***Considering the various discussions that have been set out in this document, what rules should be set directly in the Act, and what rules could be set by regulation? By by-law? By an election officer?***

D. Unique Issues for Specific Local Governments:

Some local bodies have unique circumstances, and special rules apply to them. For example:

- The Frontier School Division, which is largely in Northern Manitoba, covers a vast territory and has its own unique challenges.
- The Division scolaire franco-manitobaine covers its own unique territory and has its own unique interests and challenges.[150]
- Three "resort" communities in Manitoba substantially comprised of summer cottages, (Dunnottar, Victoria Beach, and Winnipeg Beach) are identified in *The Municipal Act*

[150] *The Public Schools Act* (Manitoba), s.21.35 to s.21.38.

for the purposes of having their own unique election date (in July, rather than in October).

> **Q. 104** ***Are there any special challenges in these areas that are not being adequately met by the current legislation? What are the unique challenges and how can they be met?***

E. Local Questions:

The Local Authorities Election Act provides the rules of process for submitting local questions to the voters. Local questions can be asked for any number of reasons. For example:

- A municipality can determine that one of its by-laws will only take effect if it has been given majority approval by the voters. A local election can be used to get that approval.[151]

- Municipal governments can restrict the availability of liquor within their territory by holding "local option" referendums. A local election can be used to determine the will of the voters.[152]

- Municipal governments can hold plebiscites to determine whether VLTs will be permitted locally. A local election can be used to determine the will of the voters.[153]

> **Q. 105** ***Is the existing legislation sufficient for submitting local questions to voters, or are there improvements that could be made? What improvements?***

---

151 *The Local Authorities Election Act* (Manitoba), s.205.

152 *The Liquor Control Act*, s. 158.

153 *The Gaming Control Local Option (VLT) Act*, s. 9.

CONCLUSION

This concludes the issues and questions identified to date respecting *The Local Authorities Election Act*. You are encouraged to provide your comments on these or any related matters. Information about how to make a submission is set out at the Introduction to this document.